

FILED '10 SEP 23 12:14 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

CARTER and LINDA POWELL,)	CASE NO. 10-6263-HO
)	
Plaintiffs,)	ORDER
)	
vs.)	
)	
BAC HOME LOANS SERVICING,)	
)	
Defendant.)	
)	

Plaintiffs, Ron and Donita Rice, appearing *pro se*, assert claims for breach of fiduciary duty, negligence, fraud, breach of the implied covenant of good faith and fair dealing, violation of the Truth in Lending Act, and Intentional Infliction of Emotional Distress related to an alleged predatory mortgage loan agreement with defendant. Before the court is plaintiffs' petition for temporary injunction.

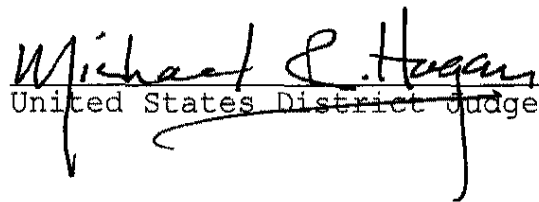
Plaintiffs seeks an emergency restraining order enjoining lender from foreclosing on their property. Plaintiffs assert, with no support by way of affidavit, that they will suffer imminent and irreparable injury if defendant is not enjoined from foreclosing on their property. Plaintiffs further assert, in conclusory fashion, there is no adequate remedy at law because they will suffer a complete loss of property. Moreover, plaintiffs assert that preliminary relief should be entered without notice to defendant because they will suffer immediate injury if the order is not granted before defendant can be heard "as defendant has made clear that foreclosure and eviction are imminent." No factual support regarding "imminent" foreclosure has been provided or even when such foreclosure is alleged to occur. Accordingly, to the extent plaintiffs seek a temporary restraining order pursuant to Fed. R. Civ. P. 65(b), the motion is denied for failure to provide specific facts clearing showing immediate and irreparable injury. See Fed. R. Civ. P. 65(b)(1)(A). Moreover, plaintiffs fail to certify what efforts, if any, have been made to give notice to defendant or the reasons why notice should not be required. See Fed. R. Civ. P. 65(b)(1)(B).

To the extent plaintiffs seek a preliminary injunction, plaintiffs shall provide proof of service of the complaint and motion on defendant, after which time a hearing will be set.

CONCLUSION

For the reasons stated above, plaintiffs' motion for temporary injunction (#2) is denied to the extent plaintiffs seek a temporary restraining order. Plaintiffs' motion for a preliminary injunction will be set following proof of service on defendant and an adequate opportunity for defendant to respond.

DATED this 23rd day of September, 2010.


United States District Judge